

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 05-O-05117-PEM
)	
ALLISON RENEE PHARIS,)	
Member No. 118291,)	DECISION AND ORDER SEALING
)	CERTAIN DOCUMENTS
<u>A Member of the State Bar.</u>)	

I. INTRODUCTION

In this original disciplinary proceeding, respondent **ALLISON RENEE PHARIS**¹ was accepted for participation in the State Bar Court's Alternative Discipline Program (ADP). Because respondent successfully completed the ADP, the court recommends, *post*, that she be placed on one year's stayed suspension and two years' probation with conditions, including a thirty-day suspension.

II. PERTINENT PROCEDURAL HISTORY

A. Respondent's Acceptance into the ADP

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed the notice of disciplinary charges (NDC) in this proceeding on November 28, 2006. And respondent filed a response to the NDC on December 27, 2006.

¹ Respondent was admitted to the practice of law in this state on June 13, 1985, and has been a member of the State Bar of California since that time. She has no prior record of discipline.

At a status conference on February 26, 2007, the court referred the matter to the ADP for evaluation at respondent's request. In furtherance of her participation in the ADP, respondent contacted the State Bar's Lawyer Assistance Program (LAP) to assist her with her mental health issues. And, on July 24, 2007, respondent signed a five-year LAP Participation Plan.

On October 4, 2007, respondent submitted, to the court, a Nexus Statement executed under penalty of perjury (Nexus Statement) and a June 15, 2007 psychiatric evaluation of respondent.

On November 7, 2007, the State Bar submitted a letter brief on the issue of discipline. Then, in December 2007, the parties executed and submitted to the court a Stipulation Re Facts and Conclusions of Law (Stipulation), which sets forth the factual findings, legal conclusions, and mitigating and aggravating circumstances in this proceeding. The Nexus Statement and the June 15, 2007 psychiatric evaluation established the existence of a nexus between respondent's mental health issues and the stipulated misconduct in this proceeding.

On December 10, 2007, the court signed an order approving the Stipulation and then lodged that order and the Stipulation together as a single document. Also, on December 10, 2007, the court issued and lodged a Confidential Statement of Alternative Dispositions and Orders (Confidential Statement) setting forth (1) the level of discipline that the court would recommend to the Supreme Court if respondent successfully completed the ADP and (2) the level of discipline that the court would recommend if respondent did not successfully complete the ADP.

In addition, on December 10, 2007, after she agreed to the alternative possible dispositions set forth in the Confidential Statement, respondent signed a Contract and Waiver for Participation in the State Bar Court's Alternative Discipline Program (Contract), which was lodged with the court on the same day. Finally on December 10, 2007, the court accepted

respondent for participation in the ADP, and respondent's participation in the ADP began. Respondent thereafter participated successfully in both the ADP and the LAP.

B. Respondent's Completion of ADP

On November 12, 2010, the court received, from respondent's mental health care provider, a letter stating that respondent's mental health issues have been resolved. (See Rules Proc. of State Bar, former rule 804 (now rule 5.385(B).) Then, on December 29, 2010, the court also received, from the provider, a December 22, 2010 letter stating that respondent had exhibited mental health stability since May 4, 2009 (about 19 months).

In an order filed January 11, 2011, the court found that respondent successfully completed the ADP and ordered that the Stipulation be filed on January 3, 2011. The court took this matter under submission for decision on January 11, 2011.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A copy of the Stipulation (together with a copy of the order approving it) is attached hereto and incorporated herein by reference, as if fully set forth herein. In the Stipulation, the parties stipulated to the following findings and conclusions.

Effective September 3, 2002, respondent was involuntarily enrolled as an inactive member of the State Bar of California because she failed to comply with California's Minimum Continuing Legal Education requirements. (Cal. Rules of Court, former rule 958 (now rule 9.31(d)); Bus. & Prof. Code, § 6070.)² Even though respondent was properly served with notice of her inactive enrollment, she failed to open the envelopes containing the notice. Almost a year later, in August 2003, respondent met with Patricia Kijak for about two and one-half hours regarding Patricia and Patricia's husband, Michael Kijak, adopting a child. During that meeting,

² All further statutory references are to the Business and Professions Code.

respondent provided legal advice to and entered into a written legal fee agreement with Patricia, and Patricia paid respondent \$1,500 in advanced legal fees.

In October 2003, respondent provided additional legal advice to Patricia on two occasions. However, after October 2003 through about December 2004, respondent failed to respond to Patricia's and Michael's numerous telephone messages inquiring as to the status of their legal matter. In early 2005, respondent responded to the telephone messages by telling the Kijaks that she could no longer represent them and that she would refer them to another attorney.

Respondent, however, never referred the Kijaks to another attorney. Nor did respondent thereafter respond to the additional telephone messages the Kijaks left for her. Upon termination of respondent's employment, respondent failed to promptly refund the \$1,500 unearned and illegal fee. Respondent refunded \$1,000 in October 2006, but did not refund the remaining \$500 until January 2007 after the intervention of the State Bar.

Respondent also failed to promptly respond to two letters she received from a State Bar investigator who was investigating the Kijaks' complaints against her.

Respondent stipulated that she engaged in the unauthorized practice of law (UPL) in willful violation of sections 6125, 6126, and 6068, subdivision (a); that she entered into an illegal fee agreement while she was enrolled inactive in willful violation of Rules of Professional Conduct, rule 4-200(A); that her UPL involved moral turpitude in willful violation of section 6106; that she failed to adequately communicate with the Kijaks in willful violation of section 6068, subdivision (m); and that she failed to promptly respond to the State Bar investigator's two letters in willful violation of section 6068, subdivision (i).

In aggravation, respondent's misconduct involved multiple acts of misconduct. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(ii).)³ In

³ All further references to standards are to this source.

further aggravation, while respondent was enrolled inactive, she also performed legal services for and collected legal fees from Dawn Ross. (Std. 1.2(b)(iii).)

Notably, there is very significant mitigation. Respondent practiced law discipline free for 18 years before she engaged in the stipulated misconduct. (Std. 1.2(e)(i).) In addition, respondent had serious family problems and severe financial difficulties at the time she engaged in the stipulated misconduct. (Std. 1.2(e)(iv).) Also, respondent cooperated with the State Bar after the NDC was filed. (Std. 1.2(e)(v).)

What is more, respondent's successful completion of the ADP, alone, is very significant mitigation. (Std. 1.2(e)(iv); see also § 6233.)

IV. DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but rather to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve confidence in the legal profession. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate alternative discipline recommendations if respondent successfully completed the ADP and if she did not successfully complete the ADP, the court considered the State Bar's letter brief on discipline as well as the standards and relevant case law. In particular, the court considered standards 1.2, 1.3, 1.4, 1.5, 1.6, 2.3, 2.4, and 2.6 and *In the Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639 (discipline imposed for UPL was three years' stayed suspension and three years' probation with conditions, including a ninety-day suspension) and *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229 (discipline imposed for UPL was two years' stayed suspension and two years' probation with conditions, including a thirty-day suspension).

Because respondent successfully completed the ADP, this court will recommend that the Supreme Court impose, on respondent, the lower level of discipline as set forth in the Confidential Statement and following discipline recommendation.

V. DISCIPLINE RECOMMENDATION

THE COURT HEREBY RECOMMENDS that respondent **ALLISON RENEE PHARIS**, State Bar number 118291, be suspended from the practice of law in California for one year, that execution of the one-year suspension be stayed, and that Pharis be placed on probation for two years subject to the following conditions:

1. Pharis be suspended from the practice of law for the first thirty days of probation.
2. Pharis must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California.
3. Within 10 days of any change, Pharis must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar (Office of Probation), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
4. Within 30 days after the effective date of discipline, Pharis must contact the Office of Probation and schedule a meeting with her assigned probation deputy to discuss these terms and conditions of probation. At the direction of the Office of Probation, Pharis must meet with the probation deputy either in person or by telephone. Pharis must promptly meet with the probation deputy as directed and requested.
5. Pharis must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10. Under penalty of perjury, Pharis must state whether she has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Pharis must also state whether there are any proceedings pending against her in the State Bar Court and, if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the period of probation and no later than the last day of the probation period.

6. Subject to the assertion of applicable privileges, Pharis must answer fully, promptly and truthfully, any inquiries of the Office of Probation which are directed to her personally or

in writing relating to whether she is complying or has complied with the probation conditions.

7. Within one year after the effective date of the discipline herein, Pharis must provide to the Office of Probation satisfactory proof of her attendance at a session of the State Bar's Ethics School and of her passage of the test given at the end of that session. The school is offered periodically at 180 Howard Street, San Francisco, California 94105-1639 and at 1149 South Hill Street, Los Angeles, California 90015-2299. Arrangements to attend the school must be made in advance by calling (213) 765-1287 and by paying the required fee. This condition of probation is separate and apart from Pharis's California Minimum Continuing Legal Education (MCLE) requirements; accordingly, she is ordered not to claim any MCLE credit for attending and completing this school. (Accord, Rules Proc. of State Bar, rule 3201.)
8. Pharis must comply with all provisions and conditions of her Participation Agreement/Plan with the Lawyer Assistance Program (LAP) and must provide the Office of Probation with certification of completion of the LAP. Pharis must immediately report any non-compliance with any provision(s) or condition(s) of her Participation Agreement/Plan to the Office of Probation. Pharis must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of Pharis's participation in the LAP and her compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. Pharis will be relieved of this condition after she provides the Office of Probation with satisfactory certification of her successful completion of the LAP.
9. The two-year probation will begin on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.) And, at the expiration of the period of probation, if Pharis has complied with all the terms of probation, the order of the Supreme Court suspending her from the practice of law for one year will be satisfied.

VI. PROFESSIONAL RESPONSIBILITY EXAMINATION

The Court further recommends that **ALLISON RENEE PHARIS** be ordered to take and pass the Multistate Professional Responsibility Examination within one year after the effective date of the Supreme Court's disciplinary order in this matter and to provide satisfactory proof of her passage of the examination to the State Bar's Office of Probation in Los Angeles within the same time period. Failure to pass the examination within the specified time results in actual suspension until passage, without a hearing. (*Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8; but see Cal. Rules of Court, rule 9.10(b); Rules Proc. of State Bar, rule 321(a)(1)&(3).)

VII. COSTS

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that those costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VIII. DIRECTION RE DECISION AND ORDER SEALING CERTAIN DOCUMENTS

The court directs one of its case administrators to file this Decision and Order Sealing Certain Documents. Thereafter, pursuant to rule 5.388(c) (former rule 806(c)) of the Rules of Procedure of the State Bar of California (Rules of Procedure),⁴ all other documents not previously filed in this matter are ordered sealed pursuant to rule 5.12 (former rule 23) of the Rules of Procedure.

The court further orders that protected and sealed material be disclosed to only: (1) the parties to the proceeding and their counsel; (2) personnel of the Supreme Court, the State Bar Court, and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their duties. Protected material must be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosures. Each person to whom protected material is disclosed must be given a copy of this sealing order by the person making the disclosure.

IT IS SO ORDERED.

Dated: January ____, 2011.

PAT McELROY
Judge of the State Bar Court

⁴ Effective January 1, 2011, the “new” Rules of Procedure of the State Bar of California became effective.